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LITERARY CRITICISM AND THE LAW OF LIBEL.—The merry critic inclined to ridicule and jest should take warning from the recent decision by the Court of Appeals of New York in *Triggs v. Sun Printing and Publishing Association*, 71 N. E. Rep. 739.

The plaintiff, complaining of three articles published by defendant, alleges that for more than seven years last past he has been an instructor or teacher in the department of English at the University of Chicago, and has also been engaged in lecture and extension work in connection with the university, and in private lecturing and writing on literary subjects since his association with the university; and that he had always as such instructor and as such lecturer and writer conducted himself with honesty, fidelity and dignity, and had never been guilty nor suspected to have been guilty of incompetency, inability, sensationalism, or dishonesty in the performance of his duties; that he had been assigned to the work of dealing with current English literature, and particularly with the poets Longfellow, Whittier, Emerson, Holmes, Garland and others.

A few passages from the articles complained of, as set out in the complaint, will show their general style and character: "Triggs in Altruria. Prof. Oscar Lovell Triggs (meaning this plaintiff), of the University of Chicago, is the brightest jewel in Dr. Harper's crown. Who doesn't know and venerate Triggs. Triggs (meaning this plaintiff), the hammer of hymn writers (meaning this plaintiff, contrived to injure the writers of hymns), the scourge of Whittier and Longfellow (meaning that plaintiff's criticisms of the poets Whittier and Longfellow were like a scourge), the panegyrist of Walt Whitman, who wrote of him in a still unpublished poem, 'I love young Oscar (meaning plaintiff), a wind of the Northwest full of vigor, cheek and elan' (meaning that plaintiff was full of impudence and was brazen-faced in his attitude towards the hymn writers and the poets). For some months Professor Triggs was collecting and comparing names for his baby. The baby was named at last, redeemed from anonymity, and the proud father once more had leisure to brood beneficently over the university and the universe. * * * Professor Triggs looked into the seeds of time and had a vision of the 'new man.' Hear and tremble miserable homonculus of today. 'The business man of the future would not be recognized by the business man of today. The present order of man will pass away. There shall come a new humanity. Notice the passing of patriotism, which is merely an expanded egotism. Notice the new state of diplomacy. All this points to the new era when the social spirit will prevail, when the selfish, the egotistic motive will be gone. The business man will wish to share his successes with the rest of society.' We hate to differ with Professor Triggs, but his remarks about patriotism are reported incorrectly, or there is some kink in his definition. If patriotism is expanded egotism, what is Triggs? If Triggs and patriotism are one, how can patriotism 'pass'? (meaning this plaintiff, and meaning that this plaintiff is an example of expanded egotism, or more, or that he is devoted to self and selfishness) * * * Let altruism have its perfect work. It may be hard for a thoroughly new business man to resist the temptation to give his goods away. As for Triggs and all other altruistic

professors of the Chicago University, they will pay Dr. Harper for the privilege of working for him. Already some of them delight to prepare for the new order by giving themselves away * * * ."

"The news that Professor Oscar Lovell Triggs, of the University of Chicago, may appear as a theatrical advance agent will give joy to every friend of higher education in America. Such a dazzling promotion for Professor Triggs must at once make college teaching more attractive to ambitious young men. Hitherto the complaint has been that the pay is small, and the work leads to nothing more. A young man who might have been a lawyer with an income ranging from \$8,000 upwards, with a prospect of a seat on the bench, or perhaps a brilliant political career, might reasonably have hesitated before becoming a professor with an income of \$3,000 or \$4,000 at the utmost, and no brass band and skyrockets. But Professor Triggs has blazed the way to new glories (meaning and intending to ridicule this plaintiff, and to compare him with a brass band or skyrockets). For years he has been showing his colleagues that a professor of mettle can himself be both a brass band and a skyrocket * * * ."

"Triggs and Romeo. To men of good liver life is full of happiness. To us it is, and long has been, one of the greatest of these felicities to guide amateurs to Prof. Oscar Lovell Triggs, a true museum piece, and the choicest treasure in Dr. Harper's collection (meaning and intending to ridicule this plaintiff by comparing him to a museum piece or a freak or a curiosity, and by characterizing him as the principal attraction in a collection of other museum pieces, freaks and curiosities). * * * His views on any subject are impressive, but on Shakespeare they would be as authoritative and final as it is his genius to be * * * The Shakespeare legend should be allowed to delude no more. Professor Triggs can be depended upon to reduce this man Shakespeare to his natural proportions, club the sawdust out of that wax figger of literature, and preach to eager multitudes the superiority of the modern playwrights with all the modern improvements. The so-called poetry and imagination visible in this Stratford charlatan's plays must be torn out—deracinated, the fellow would call it, in his fustian style. If these plays are to be put upon the stage they must be rewritten; and Prof. Triggs is the destined rewriter, amender and reviser. The sapless, old-fashioned rhetoric must be cut down. The fresh and natural contemporary tongue, pure Triggsian, must be substituted. For example, who can read with patience these tinsel lines?

'Madam, an hour before the worshipped sun
'Peered forth the golden window of the east,
'A troubled mind drave me to walk abroad.'

This must be translated into Triggsian, somewhat like this:

'Say, lady, an hour before sunup I was feeling wormy,
and took a walk around the block.'

Here is more Shakesperian rubbish:

'O, she doth teach the torches to burn bright!
'Her beauty hangs upon the cheek of night,
'As a rich jewel in an Ethiop's ear.'

How much more forcible in clear, concise Triggsian:

'Say, she's a peach! a bird!'

Hear 'Pop' Capulet drivel:

'Go to, go to,

'You are a saucy boy!'

In the Oscar dialect this is this:

'Come off, kid! You're too fresh.'

There is more of the same sort.

Defendant demurred to the complaint on the ground that it did not state facts sufficient to constitute a cause of action, but the court at Special Term overruled the demurrer, finding that the complaint stated facts sufficient to constitute a cause of action and that the statements complained of are libellous per se. On defendant's appeal to the Appellate Division the judgment was reversed and the demurrer sustained (*Triggs v. Sun Printing and Publishing Co.*, 86 N. Y. Supp. 486), four of the five justices who heard the case being of opinion that the articles were not libellous per se and that the complaint did not state facts sufficient to constitute a cause of action; that the articles were written and "plainly intended to be understood as humorous and not serious. * * * The plaintiff has taken this publication too seriously, and has considered what was intended to amuse the readers of the paper as a serious criticism upon his work."

However, the Court of Appeals considers the articles libellous; that they "go far beyond the field of fair and honest criticism, and are attempts to portray the plaintiff in a ridiculous light"; that they represent him as illiterate, uncultivated, coarse, vulgar, egotistical and conceited in the extreme; that they ridicule his private life by charging that he was unable to select a name for his baby until after a long period of solemn deliberation; that if "they can be regarded as having been published as a jest, then it should be said that, however desirable it may be that the readers of, and the writers for, the public prints shall be amused, it is manifest that neither such readers nor writers should be furnished such amusement at the expense of the reputation or business of another."

In cases of this character it is sometimes difficult to determine whether or not the limits of "fair" criticism have been exceeded, but most readers will probably agree with the Court of Appeals that these articles were necessarily calculated "to injure the plaintiff's reputation, and to expose him to public contempt, ridicule or shame."

The English decisions, which are sometimes said to sanction greater liberty to the critic than is permitted here, are discussed in *McQuire v. Western Morning News Co.* [1903], 2 K. B. 100. In this case plaintiff, a theatrical manager as well as author, composer and actor, sought to recover damages for libel. The alleged libel was a severe criticism, published by defendant, of the performance of plaintiff's musical comedy performed under his management. The criticism referred to the "vulgarity" of the songs in the play, the "sorry stuff" contained in it, and suggested that the actors were but "music-hall artistes." The plaintiff had been awarded damages by a jury, but on appeal the case was dismissed, as the Court held that the criticism was not libellous.